

HB 1294-FN - AS INTRODUCED

2024 SESSION

24-2171

10/08

HOUSE BILL ***1294-FN***

AN ACT relative to prohibiting the state of New Hampshire from enforcing the regulations of the Environmental Protection Agency.

SPONSORS: Rep. Granger, Straf. 2; Rep. Bailey, Straf. 2; Rep. Burnham, Straf. 2; Rep. Gerhard, Merr. 25; Rep. Cushman, Hills. 28; Rep. Belcher, Carr. 4

COMMITTEE: Environment and Agriculture

ANALYSIS

This bill states that the federal Environmental Protection Agency has no constitutional validity in this state, and requires that the New Hampshire department of environmental services provide for all environmental protection in this state.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to prohibiting the state of New Hampshire from enforcing the regulations of the Environmental Protection Agency.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Findings. The general court makes the following findings:

2 I. The Tenth Amendment to the Constitution of the United States reads as follows: "The
3 powers not delegated to the United States by the constitution, nor prohibited by it to the States, are
4 reserved to the States respectively, or to the people."

5 II. The Tenth Amendment defines the total scope of federal power as being that which is
6 specifically granted by the Constitution of the United States and no more.

7 III. Article VI of the Constitution of the United States states that federal laws are supreme
8 only when made "in pursuance" of the Constitution of the United States.

9 IV. The scope of power defined by the Tenth Amendment means that the federal government
10 was created by the states specifically to be an agent of the states.

11 V. The regulation making authority of the United States Environmental Protection Agency
12 is not authorized by any article of amendment of the Constitution of the United States and violates
13 the Constitution's true meaning and intent as given by the founders and ratifiers.

14 2 New Paragraph; Department of Environmental Services; Establishment; Functions. Amend
15 RSA 21-O:1 by inserting after paragraph II the following new paragraph:

16 III.(a) Because the authority of the United States Environmental Protection Agency is not
17 authorized by any article or amendment of the Constitution of the United States, all regulations
18 imposed by the United States Environmental Protection Agency are void in New Hampshire. The
19 state and it's political subdivisions, including, but not limited to counties, cities, towns, precincts,
20 water districts, school districts, school administrative units, or quasi-public entities, shall not engage
21 in the enforcement of, or any collaboration with the Environmental Protection Agency.
22 Furthermore, any requirements, mandates, recommendations, instructions, or guidance by the
23 Environmental Protection Agency shall have no force of effect in New Hampshire.

24 (b) The state, being conscious of the need for environmental protection for its citizens,
25 shall provide environmental protection through the department of environmental services
26 established by this chapter.

27 (c) The department of environmental services shall be responsible for the
28 implementation of all necessary rules concerning environmental protection in New Hampshire.

29 3 Effective Date. This act shall take effect 60 days after its passage.

**HB 1294-FN- FISCAL NOTE
AS INTRODUCED**

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FISCAL IMPACT: State County Local None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<i>Revenue Fund(s)</i>	Federal Revenue			
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source(s)</i>	General Fund Various Government Funds			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? No
- Does this bill authorize new positions to implement this bill? No

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable

METHODOLOGY:

This bill states that the federal Environmental Protection Agency (EPA) has no constitutional validity in this State, and requires that the Department of Environmental Services provide for all environmental protection in this State.

The Department of Environmental Services states this bill would cost the state hundreds of millions of dollars in lost federal revenue. The bill would increase state expenditures as a result of the federal funds lost, and the need for additional staff to write new administrative rules and

to administer programs. There would be additional costs, in both time and money, to local municipalities, county government, and private sector entities. The Department indicates the bill would prohibit the Department from the enforcement of EPA regulations or any collaboration with the EPA. The bill would require the Department to propose legislation and write rules and regulations that would “replace any requirements, mandates, recommendations, instructions, or guidance” by the federal EPA. The Department states the bill would have far-reaching implications for the Department, and the public it serves as the Department has many programs that are linked to EPA programs. In general, these implications fall into three categories: 1) programmatic and regulatory, 2) funding, and 3) logistical. The examples listed below are a subset of the potential impact.

Programmatic and regulatory implications.

- The Safe Drinking Water program is a State program which has been delegated primacy enforcement responsibility by the EPA. If the State were to lose that primacy, all drinking water requirements and compliance would be regulated by EPA. The time frames for EPA to act on requests for new wells or upgrades to infrastructure would be much longer than the State process.
- The Title V Operating Permit Program is a program which combines federal and state air regulations into one document for major sources of air emissions such as power plants, industrial facilities, and waste facilities such as incinerators and landfills. This is a State program that the Department has been delegated primacy by EPA based on the current regulatory structure of statutes and State rules. If the State were to lose that primacy, all Title V Operating Permits would be issued by EPA. The time frame for EPA to act on these permits would be significantly longer than the State process. Even if NH adopted mirror regulations into State law and rules, it is uncertain if EPA would retain the Title V Operating Permit Program since the mechanism for approval would be severed by the proposed legislation. In addition, it is uncertain if the emission-based fees associated with the program would be paid to EPA instead of the Department which would result in the State being required to implement its own fee structure to support a State permit program for major sources.
- The Clean Air Act assigns primary responsibility for air pollution control to state governments. New Hampshire has fulfilled these requirements through a state implementation plan (SIP) that started in 1970 and continues to be updated as new standards for certain pollutants and State rules are updated. Under the current framework, the Department works with the regulated community to develop local solutions to environmental issues and then advocates for those solutions to EPA on behalf of the regulated community in order to receive approval of the SIP. If the State failed to meet certain obligations incorporated in our federally mandated SIP or no longer had a SIP in place, the State could be subject to imposition of a Federal Plan (FP) which would be developed and enforced by EPA and impact regulated sources in NH without NH input.
- Loss of the delegation of federal programs would result in the loss of the Department's ability to enforce asbestos regulations or the ability for the Department to conduct Asbestos Hazard Emergency Response Act (AHERA) inspections in schools, the loss of grant funding for that program, and potential public health risks. The Department receives approximately 2,000 notifications of asbestos projects per year. If notification

and enforcement of asbestos rules reverted back to EPA, construction projects throughout the State would be negatively impacted. Finally, training and licensing of asbestos contractors is currently done primarily out-of-state with reciprocity for licensing of asbestos contractors between states. The reciprocity aspect could be lost if the State developed asbestos training and licensing requirements different than those imposed by federal laws.

- Similar to the water related programs above, writing state level rules to replace the hundreds or thousands of pages of EPA regulation currently incorporated into Air Resources Division rules would require several new staff and take a significant number of years to adopt. Revising the entire SIP to reflect these regulatory changes would be very costly and take a number of years to complete with little or no environmental improvement. In the meantime, sources currently subject to state level regulation and/or enforcement, which is the majority of environmental enforcement cases in the State, would be subject to direct federal regulation with little recourse. Even after adoption of State statutes and rules, there would be ambiguity as to which entity (EPA or the Department) would have enforcement authority. This would impact large and small private sector entities that need permits to operate.

Funding implications.

- The Department receives over \$150 million per year in federal funds from the EPA across dozens of programs. This bill would prevent the Department from receiving these funds. In many cases, such as the Safe Drinking Water program and implementation of the Clean Air Act, the Department is either delegated or required by the EPA to regulate and coordinate activities on behalf of the federal government. Loss of the federal funds would have a major impact on local governments and drinking water suppliers that depend on funding sources such as the State Revolving Fund (SRF). Over the past 30 years, the State Revolving Loan Fund (SRF) for drinking water and wastewater have loaned out over \$1 billion to local governments. The EPA must review and approve the Intended Use Plans for these and other funds on an annual basis. If the Department were prohibited from seeking that approval, as this bill would require, the SRF would be unavailable to New Hampshire communities to upgrade and modernize their facilities and protect human health. In FY 2024, the budgeted amount in the SRF federal funds is \$74 million. Under the Clean Air Act, if the State failed to follow our obligations under the SIP, the EPA would impose federal sanctions including loss of federal highway funds and additional costly requirements on New Hampshire businesses to reduce air emissions. In addition, funding from the EPA provides certain staffing and the ability to purchase and maintain the ambient air monitoring network which is crucial to implementation of existing air regulations both state and federal.

Logistical implications.

- There are many “logistical” interactions between the Department and EPA that would be affected by this bill. For example, wetland permits are coordinated between the Department and the Army Corps of Engineers under the Clean Water Act. The EPA also plays a role in that coordination. If the Department was not part of that activity, the process of getting a wetlands permit would become complicated, more expensive and take more time. This would impact local and county governments that need permits or desire development projects, such as housing. Having regulations that are consistent across the country is more desirable for regulated entities than to have each state incorporate different regulatory schemes.

It is assumed that any fiscal impact would occur after FY 2024.

AGENCIES CONTACTED:

Department of Environmental Services